

NEW ISSUE III:

A. Write the new issue you want the Court to consider:

Was defendant-appellant's trial counsel ineffective for failing to raise with the trial court issues of improper conduct among the jury pool and jury, failing to utilize a peremptory challenge against a biased and admittedly partial juror, and for failing to request a mistrial on at least two occasions: when the jury pool was obviously tainted and when the jury foreperson was discovered, during the pendency of the trial, having a secret conversation in a courthouse bathroom with the mother of the deceased?

B. The Court should review this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

2. The issue raises a legal principle that is very important to Michigan law

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and citations, laws or court rules, etc. that support your argument and explain how they apply to this issue. State the facts that support and explain this issue. If any facts were not presented in the Court of Appeals, explain why. You may add more pages.

During jury selection, several potential jurors were disruptive and antagonistic towards defense counsel and other members of the jury pool being questioned during voir dire. One potential juror was so vocal in her hatred for police and her attempts to influence her peers so blatant, that she was dismissed by the trial court. The trial court was so offended by the misconduct, that it indicated it would pursue contempt of court charges against the dismissed juror. Based on the foregoing, defense counsel requested a new jury panel, which the court denied. Defense counsel was then informed that upon exiting the courtroom, the dismissed juror hugged another potential juror. The potential juror, who was eventually seated and served on the jury, stated to the dismissed juror, "We got this, sis." Inexplicably, defense counsel neither raised this issue with the court, nor requested a mistrial based on the fact that the jury pool was clearly tainted. [insert authority -- look for something about failing to raise an issue with the court and also failing to request mistrial in light of a tainted jury or juror misconduct]

Also during voir dire, a juror admitted that her husband had worked at the Wayne County Prosecutor's Office for 21 years. The Assistant Prosecutor in the case at bar referred to her husband by his first name, and admitted that they had worked together in the very same division. The juror further indicated in a juror questionnaire that she was not sure if she could serve as an impartial juror as she sympathized with the deceased and the deceased's mother. The court erroneously refused to excuse the juror for cause, and defense counsel failed to utilize a peremptory challenge against her. Such failure amounted to ineffective assistance of counsel, and the juror eventually served on the jury. [insert authority here - look for failure to use peremptory challenges against clearly biased jurors]

To further compound the matter, during the trial, the very same juror was discovered having a secret conversation with the deceased's mother in a courthouse bathroom, and this after all jurors and family members (of the defendant and the deceased) were instructed to use separate and specific bathrooms, avoid all contact, and to report any such contact. The jury foreperson did not report to the court her conversation with the deceased's mother. Rather, defense counsel notified the court and the court questioned the jury foreperson about the conversation. The jury foreperson admitted to speaking to the deceased's mother in the bathroom, but described the substance of that conversation as unimportant and benign. Even ignoring the juror's impugned credibility in light of her failure to report the conversation, the court should have sua sponte declared a mistrial, but did not. In spite of the juror's obvious biases and her self-reported sympathy with the deceased and the deceased's mother, and coupled with the juror's secret and unreported conversation with the deceased's mother in a courthouse bathroom, defense counsel again inexplicably failed to request a mistrial. Such a blatant failure exceeds all bounds of competence and amounts to ineffective assistance of counsel. [insert authority - again look for cases where defense counsel failed to request a mistrial in light of some blatant juror misconduct or where jurors were engaged in improper conversation -

Defense counsel's blatant ineptitude provides that there is a "reasonable probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different." At the very least, a mistrial would have been declared or the clearly biased juror would have been

dismissed. *Strickland v Washington*, 466 US 668, 694. ; *Virgil v Dretke*, 446 F3d 598, 612-613 (CA 5, 2006)

The combined effect of defense counsel's errors negatively impacted the outcome of the trial and also justify a finding of ineffective assistance of counsel. *Unger*, 278 Mich App at 258. *People v Jendrzewski*, 455 Mich 495, 501; 566 NW2d 530 (1997)